

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WILLIAM T. ROWSE ET AL.

Serial No.: 09/683,885

Filed: February 27, 2002

Group Art Unit: 3629

Examiner: Jonathan P. Ouellette

For: METHOD SYSTEM AND SOFTWARE FOR TRANSMITTING DIGITAL
MEDIA BETWEEN REMOTE LOCATIONS

Attorney Docket No.: FMC 1357 PUS

REPLY TO EXAMINER'S ANSWER

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed November 20, please consider the following remarks:

Remarks

The Examiner is required to show by "substantial evidence" that the Xactware reference was publically disseminated or publically accessible (*i.e.* catalogued or indexed in a publically-accessible database) prior to the Appellants date of invention. MPEP 1216.01; *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d 1769,1775 (Fed.Cir.2000). The Examiner asserts that "the Internet Archive is a tool used to access internet pages that were published and publically-accessible in the well documented past." Examiner's Answer, November 20, 2009, p. 13. The Examiner's mere assertions are not "substantial evidence."

Please charge any additional fees or credit any overpayments as a result of the filing of this paper to Deposit Account No. 06-1510.

Respectfully submitted,

WILLIAM T. ROWSE ET AL.

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Date: December 14, 2009

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